

Necessary format and other typographical changes may be made to the proposed Regulation, as noticed June 20, 2014, and the proposed Resolution circulated on June 30, 2014. The following are specific changes to the draft document shown in **bold underline and ~~strikeout~~**, ~~Red ~~strikeout~~~~ and **blue underline** reflect changes made to Change Sheet #2 or read into the record at the board meeting.

1. Data Relied Upon for Curtailments

Add to proposed California Code of Regulations, title 23, section 875 subd. (c), immediately after subd. (c) (4):

Any order issued pursuant to this section shall be accompanied by the Deputy Director's determination of the (i) quantity of water supply available by priority or type of right at the water right holder's point of diversion; (ii) total downstream water right demand, including the known quantity, location, and basis of right; and (iii) the State Water Board's assumptions pertaining to the diverter's right. When issuing curtailment orders to senior water right holders, the Deputy Director shall include information to indicate that water is not available for the senior water user regardless of the effectiveness of curtailments issued to junior water right holders. In addition, the Deputy Director shall provide information regarding the calculated water supply the quantity of water that should be made available by the prior curtailment of more junior water rights.

Add the following new paragraph to the proposed Resolution under the "Whereas" section:

Proposed California Code of Regulations, title 23, section 875, subdivision (c), provides that curtailment orders will be mailed to each water right holder or the agent of record on file with the State Water Board, Division of Water Rights and that the Order shall be accompanied by the Deputy Director's determination of the (i) quantity of water supply available by priority or type of right at the water right holder's point of diversion; (ii) total downstream water right demand, including the known quantity, location, and basis of right; and (iii) the State Water Board's assumptions pertaining to the diverter's right. It also provides that when issuing curtailment orders to senior water right holders, the Deputy Director shall include information to indicate that water is not available for the senior water user regardless of the effectiveness of curtailments issued to junior water right holders. In addition, the Deputy Director shall provide information regarding the quantity of water that should be made available by the prior curtailment of more junior water rights. This information will also be posted to the State Water Board's website at least 7 days prior to issuance of any curtailment Orders. The State Water Board will also send information electronically out via ltr lists it maintains to affected water right holders, including drought notices and updates regarding curtailments and notices of data used to support curtailments and suspension of curtailments. The State Water Board will also provide the same information for curtailment notices issued under the State Water Board's existing processes.

2. Suspension of Curtailments

Amend the first paragraph of proposed California Code of Regulations, title 23, Section 875, subdivision (c) as follows:

In determining whether water is available under a diverter's priority of right and to issue **or suspend** curtailment orders, the Deputy Director for the Division of Water Rights, or her designee, may rely upon:

Amend proposed California Code of Regulations, title 23, section 875, subdivision (c) (4) as follows:

To the extent that it is available and staff resources permit, the Deputy Director for the Division of Water Rights may also consider additional pertinent and reliable information when determining water right priorities, water availability and demand projections, **and whether curtailment orders should be suspended.**

Add to resolution:

The Division of Water Rights will timely suspend curtailment notices under the existing process and curtailment Orders pursuant to the emergency regulation based on hydrology.

3. Riparians and Natural Flow

Amend the second sentence of Section 875 subdivision (c) (1) as follows:

Absent evidence to the contrary, riparian water rights are presumed senior to appropriative water rights **with regard to natural flow** for purposes of curtailments pursuant to this section.

4. Review Time for Petitions for Reconsideration

Add the following new paragraph to the "Therefore Be It Resolved" section of the proposed Resolution:

As quickly as possible and not later than 30 days after receipt of any petition for reconsideration of a curtailment Order issued pursuant to this emergency regulation, State Water Board, Division of Water Rights staff shall conduct an initial review of the petition to determine if the petition raises significant factual issues that are likely to merit reconsideration of the curtailment Order. In cases where significant factual issues that are likely to merit reconsideration of a curtailment Order are identified, the Division of Water Rights shall immediately suspend any applicable curtailment Order until such time as the petition for reconsideration is acted upon. The Executive Director shall provide frequent ~~regular~~ reports to the Board regarding matters raised in petitions for reconsideration.

5. No Precedent

In the propose Resolution in the “Therefore Be It Resolved” section add the following new paragraph:

Except for purposes of enforcement of a curtailment order issued pursuant to this regulation, this regulation and any curtailment order issued hereunder shall not be cited or relied upon as authority for, or evidence of, any water right affected or protected by this regulation.

6. Additional Notice of Potential Curtailment Orders

Amend proposed California Code of Regulations, title 23, Section 875, subdivision (d) as follows:

(d) Curtailment orders will initially be mailed to each water right holder or the agent of record on file with the State Water Resources Control Board, Division of Water Rights. **The Deputy Director shall provide notice by lyris or the Board’s drought webpage at least five seven-(75) working days prior to issuance of curtailment orders for riparian or pre 1914 appropriative water rights.** The water right holder or agent of record is responsible for immediately providing notice of the orders to all diverters and/or water users exercising the water right.

7. Applicability to Pre-14 Appropriative and Riparian Water Rights

Option A

~~Under proposed California Code of Regulations, title 23, section 875 add a new subdivision (g) following subdivision (f) as follows:~~

~~(g) **The Deputy Director shall not issue curtailment orders under this section for diversion under riparian rights or pre 1914 appropriative water rights (those with a priority date before December 19, 1914), unless:**~~

~~(1) **Another legal user of water files a complaint with the State Water Board alleging interference with water rights by riparians or pre 1914 appropriators, or**~~

~~(2) **The Deputy Director finds that stored water is being unlawfully diverted by riparians or pre 1914 appropriators.**~~

~~Under proposed California Code of Regulations, title 23, section 879 (Reporting), add a new subdivision (c) as follows:~~

~~(c) **Upon receipt of a complaint alleging interference with a water right by a riparian or pre 1914 appropriative water right holder or upon receipt of information that indicates unlawful diversions of stored water by riparians or pre 1914 appropriative water right holders, the Deputy Director may issue an order under this article requiring such water right holders to provide additional information regarding the property patent date, the date of initial appropriation, and diversions**~~

~~made or anticipated during the current drought year. Any water right holder receiving an order under this subdivision shall provide the requested information within 5 days.~~

Add the following new paragraph to the Resolution under the “Whereas” section:

~~Given complexities surrounding the relative priority of individual pre-1914 appropriative water rights and riparian water rights, the emergency regulation makes curtailment orders an option for riparian and pre-1914 appropriative rights only where a legal user of water files a complaint alleging interference with water rights by riparians or pre-1914 appropriators or the Deputy Director determines that stored water is being unlawfully diverted by riparians or pre-1914 appropriators. In light of the complexities regarding the relative priority of riparian and pre-1914 appropriative rights, upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 appropriative water right holder, or information indicating unlawful diversion of stored water by riparians or pre-1914 appropriative water right holders, the Deputy Director may issue an order to these diverters requiring the diverter to provide certain information necessary for determining issues of relative priority.~~

Option B

Add the following language under proposed California Code of Regulations, title 23, section 875, subdivision (a):

(a) California is in a state of extreme drought, and the Governor has issued a proclamation of a state of emergency based on these drought conditions.

Under such drought circumstances, Water Code section 1058.5 provides for the State Water Resources Control Board to adopt emergency regulations to provide for curtailments in order of water right priority when water is not available under the diverter’s priority of right.

(b) After the effective date of this regulation, when flows are sufficient to support some but not all diversions, the Deputy Director for the Division of Water Rights, or her designee, may issue curtailment orders **to post-1914 appropriative** water right holders in order of water right priority, requiring the curtailment of water diversion and use except as provided in sections 878 and 878.3.

Add under proposed California Code of Regulations, title 23, section § 879 (Reporting), a new subdivision (c) as follows:

(c) Upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 water right holder or upon receipt of information that indicates unlawful diversions of stored water by riparians or pre-1914 water right holders, the Deputy Director may issue an order under this article requiring such water right holders to provide additional information regarding the property patent date, the date of initial appropriation, and diversions made or anticipated during the current drought year. Any water right holder receiving an order under this subdivision shall provide the requested information within 5 days.

Add the following new paragraph to the Resolution under the “Whereas” section:

Given complexities surrounding the relative priority of individual pre-1914 appropriative water rights and riparian water rights, the emergency regulation does not apply curtailment orders to these categories of water rights. However, in light of the complexities regarding the relative priority of riparian and pre-1914 appropriative rights, upon receipt of a complaint alleging interference with a water right by a riparian or pre-1914 water right holder, or information indicating unlawful diversion of stored water by riparians or pre-1914 water right holders, the Deputy Director may issue an order to these diverters requiring the diverter to provide certain information necessary for determining issues of relative priority. Staff are encouraged to investigate whether curtailment notices and potential enforcement under the Board’s existing processes should be pursued for these diverters based on the information received.

8. Additional Informative Processes

Add to Resolution:

Additionally, to assure that the State Water Board is prepared for another dry year ~~in 2015~~, it will engage with stakeholders in various watersheds over the next six months to refine data and gather input on how to most effectively implement and enforce the water rights priority system in future dry years. The primary objective is to improve the State Water Board’s and the water users’ confidence in the technical tools and analysis that will be used for making determinations on water availability relative to water rights priority. The Executive Director and staff will provide a report ~~of these meetings~~ with recommendations to the Board by January 31, 2015.

As part of this process, State Water Board staff and stakeholders will consider: 1) the State Water Board’s January 1978 “Dry Year Program” and its recommendations for enforcing the water rights priority system; 2) the 2014 curtailment and complaint process ~~effectiveness of this emergency regulation~~; 3) the quality of the data in the water rights database for post-1914 and pre-1914 appropriative water rights and riparian water rights (including as compared to the reported demand data in the 1978 Dry Year Program Report, statewide planning models and other available information); and 4) opportunities to expand and improve data and database capabilities to assist with the implementation of the water rights priority system in future dry years.